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Consolidated Traction Co. v. Glynn, 30 Vroom (N. J.), 432; but if the contributory negligence was present it makes no difference whether a signal was given or not. *Merkle v. N. Y., L. Erie & West. R. R. Co.*, 20 Vroom (N. J.), 473; *Heaney v. L. Island R. R. Co.*, 112 N. Y., 122. It has even been held that this doctrine is as applicable to a child as to an adult. *Hayes v. Norcross*, 162 Mass., 546. It is also worthy of note that in the case of steam railroads the rule that one must look before crossing admits of no relaxation. *McGrory Adm'x. v. Chicago, M. & St. P. Ry. Co.*, 31 Fed., 531. There are some recent cases, however, that hold it not negligence *per se* for a person crossing a trolley track not to look. *Warner v. Bangor, Orono & Old Town R. R. Co.*, 95 Me., 115; *Kelly v. Wakefield, etc., Street R. R.*, 75 Mass., 331. However, he must do for his safety what an ordinarily careful person would do, under like circumstances, *Hall v. West End Street R. R.*, 168 Mass., 461.

TRIAL—COURSE AND CONDUCT OF TRIAL—PRESENCE OF JUDGE—ERROR.—*KRUSE v. ST. LOUIS, I. M. AND S. RY. CO.*, 133 S. W., 841 (ARK.).—*Held*, that the temporary absence of a judge from a trial, unless the party complaining showed some misconduct of his adversary during such absence, will not be considered such error as will justify a new trial. Kirby and Hart, J. J., *dissenting*.

There is a decided conflict of authority as to the case under discussion, but the general American rule seems to be that the absence of a trial judge, without the consent of the parties, from the courtroom during a trial, is material error, for which judgment should be reversed and a new trial ordered, 1 *Thomp. Trials*, Sec. 955; *State v. Smith*, 49 Conn., 376; *Smith v. Sherwood*, 95 Wis., 558, and especially during the closing argument of counsel. *Brownlee v. Hewitt*, 1 Mo. App., 360. It has been held that though a party make no objection to a judge's absence, yet that will not prejudice his interests. *State v. Claudius*, 1 Mo. App., 551. There is, however, some authority for the proposition that if a party make no objection to such absence he can not obtain a new trial. *O'Shields v. State*, 81 Ga., 301; *Pritchett v. State*, 92 Ga., 301; and so it has also been held that the appellee must show that there has been no prejudice during the absence in order to prevent adjudication of error. *State v. Carnacy*, 106 Iowa, 483. There is also authority for the view that it is within the discretion of the judge whether or not to absent himself at any time during the trial, and if he so does, and no prejudice is shown, it is not error. *Baxter v. Ray*, 52 Iowa, 336; and it has also been held that if counsel continue their arguments right to appeal is waived, whether prejudice occurs or not. *Oakley v. Aspinwall*, 3 N. Y., 547.

TRIAL—INSTRUCTIONS.—*SOUTHERN RY. CO. v. JOHNSON'S ADM'X.*, 69 S. E., 323 (VA.).—*Held*, that where a railroad engineer was killed in a collision due to his violation of the signal rules, and the evidence showed neither knowledge of infractions of the rule by the superintendent or his assistants, nor a fixed habit of disregarding the rule, the court erred in submitting to the jury whether compliance with the rule had been suspended or waived.